

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
<b>NPCR, INC. d/b/a NEXTEL PARTNERS</b>	)	
	)	
Petition for Designation as an Eligible	)	
Telecommunications Carrier in the	)	
Commonwealth of Pennsylvania	)	

**COMMENTS OF COMMONWEALTH TELEPHONE COMPANY**

Commonwealth Telephone Company (“CTCo”) respectfully submits these comments in response to the Public Notice, DA 03-1929, released June 12, 2003, concerning the petition of NPCR, Inc. d/b/a Nextel Partners (“Nextel”) for designation as an eligible telecommunications carrier in the Commonwealth of Pennsylvania.

CTCo is a rural local exchange carrier providing affordable, low-priced telephone services throughout a territory of approximately 5,000 square-miles in eastern Pennsylvania. CTCo provides local exchange service to approximately 337,000 lines in seventy-nine telephone exchanges. CTCo is a “rural telephone company” as defined in section 3(37) of the Communications Act of 1934 (“Act”), 47 USC § 153(37); and has been designated as an eligible telecommunications carrier (“ETC”) by the Pennsylvania Public Utility Commission pursuant to section 214(e)(2) of the Act, 47 USC § 214(e)(2).<sup>1</sup> The service area for which Nextel seeks designation as an ETC includes CTCo’s operating territory.

CTCo is not opposed to the designation of additional ETCs in its rural service territory, *if* the applicable statutory criteria are satisfied. However, it is the burden of the applicant to demon-

---

<sup>1</sup> Docket No. M-00960799, order entered Sept. 9, 1996.

strate that a designation is justified, and, as these comments will explain, Nextel has not met that burden in this case. Therefore, CTC Co asks that the Petition be denied without prejudice.

**1. Statutory Requirements for ETC Designation**

Section 214(e)(6) of the Act authorizes this Commission to designate a carrier as an ETC if the carrier is not subject to the jurisdiction of a State commission. This provision appears to be applicable to Nextel, as it has submitted a letter from the Pennsylvania Public Utility Commission indicating that that agency does not have jurisdiction over providers of commercial mobile services. The statute provides in relevant part as follows:

Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

Because CTC Co is a rural telephone company that has already been designated as an ETC, Nextel must demonstrate both that it meets the requirements of section 214(e)(1), and that designation of an additional ETC in the area served by CTC Co would be in the public interest.

In addition, section 214(e)(5) provides that, in the case of an area served by a rural telephone company, the “service area” designated under subsection (e)(6) is the rural telephone company’s study area, unless both the Commission and the State agree otherwise. CTC Co serves a single study area comprising all 79 exchanges within its territory (as shown on Attachment 3 to the Petition). Nextel has asked to be designated as an ETC for CTC Co’s entire study area.

**2. Nextel Has Not Shown That It Satisfies All Criteria of Section 214(e)(1)**

As an initial matter, Nextel must demonstrate that it will meet all the criteria of section 214(e)(1). Nextel alleges that it will provide service over its own facilities and will offer each of

the supported functionalities required by Section 54.101(a) of the Commission's rules, 47 CFR § 54.101(a).

Although Nextel's Petition indicates that the company will offer all of the services required by the Commission's rules, CTCO is concerned that Nextel may be unable to offer those services "throughout the service area for which the designation is received[.]" as required by Section 214(e)(1). This requirement is key to the entire statutory scheme, since the goal of universal service would not be advanced by service that is not actually available to all customers within the service area.<sup>2</sup>

Nextel alleges that it will "provide supported services throughout the Designated Areas in the Commonwealth of Pennsylvania[.]" Petition at 2. This statement, however, is contradicted by the map Nextel attaches to its own Petition as Attachment 3. The map shows the coverage area of Nextel's system as a "red cloud," and the service territories of incumbent LECs in various colors; CTCO's service area appears in blue.<sup>3</sup> As Nextel's own map shows, vast areas of the CTCO study area are not served by Nextel, including virtually all of Tioga County and Sullivan County, and large portions of Bradford County (all in the northeastern portion of Pennsylvania), as well as CTCO's Bangor, Coopersburg, Ferndale, and Uhlerstown exchanges in southeastern Pennsylvania.<sup>4</sup>

---

<sup>2</sup> See section 1 of the Act, 47 USC § 151, declaring Congressional purpose to make telecommunications services "available, as far as possible, to *all* the people of the United States" (emphasis added).

<sup>3</sup> CTCO is attaching to its electronically-filed comments a color PDF of Nextel's Attachment 3, for the benefit of readers who do not have access to the colored map. The blue color represents only a portion of CTCO's study area, since portions of the study area that are within Nextel's coverage are covered by red. Also, Nextel's map does not accurately depict study area boundaries in some cases, although most of the blue area does correspond to exchanges served by CTCO.

<sup>4</sup> CTCO believes that Nextel is not actually capable of providing service to a significant number of residential and business customers, even within the area shown in red on the map, due to the mountainous nature of the terrain in many of the exchanges served by CTCO. Indeed, Nextel implicitly admits that it cannot provide universal coverage in footnote 8 of its Petition, in which it states that "[g]eography, atmospheric conditions and man-made ... interference may at times reduce or increase a wireless user's coverage area[.]"

The Commission has recognized that an ETC applicant need not demonstrate that it can provide ubiquitous coverage at the time of its application, if it demonstrates both “capability and commitment” to provide the supported services once it receives high-cost support.<sup>5</sup> In this case, however, Nextel claims that it already has facilities in place to provide the supported services, and makes no commitment to upgrade its network. Petition at 2. Therefore, if Nextel’s existing infrastructure cannot provide service in all of CTCO’s study area, the Commission must deny the Petition.

Further, this is not a mere case of “dead spots” in Nextel’s service territory. Although the Wireline Competition Bureau has ruled that “small dead spots” in a wireless provider’s service territory do not disqualify it from receiving ETC status,<sup>6</sup> these gaps in coverage shown on Nextel’s map are not “small” by any reasonable standard. The Bureau has not considered a situation where the “dead spots” actually encompass entire counties and entire ILEC exchange areas. Customers who purchase mobile service presumably realize that they will not have service 100% of the time as they move around their community. In this case, however, a significant number of customers cannot obtain primary service from Nextel at their homes or businesses because Nextel does not cover their community *at all*. If a carrier is not capable of providing primary residential or business service to customers within the service area, then it is not providing “universal” service and should not be designated as an ETC.

### **3. Nextel Has Not Demonstrated That Its Designation Would Be In the Public Interest**

As noted above, in the case of an area served by a rural telephone company, the Commission must find that the designation of an additional ETC would be in the public interest. CTCO

---

<sup>5</sup> See *Federal-State Joint Board on Universal Service, Western Wireless Corp. Petition for Pre-emption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168 at paras. 17, 24.

<sup>6</sup> *Federal State Joint Board on Universal Service, RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout Its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, DA 02-3181, paras. 16-17 (WCB Nov. 27, 2002) (“RCC Order”).

respectfully submits that the facts stated by Nextel in its Petition are insufficient to demonstrate that the public interest standard would be satisfied.

Nextel's discussion of the public interest standard is limited to four paragraphs (Petition at 6-8). First, it cites a previous Commission statement that designation of competitive ETCs "promotes competition" and benefits consumers by "increasing customer choice, innovative services, and new technologies." Nextel claims that "in most cases" the areas in which it seeks designation are "not presently served by competitive wireline carriers that could provide an alternative to the incumbent LEC[.]" and that designating Nextel as an ETC would "provide a valuable alternative to the existing telecommunications regime in these areas[.]" Petition at 6-7. There are numerous logical flaws in these arguments.

As an initial matter, the mere fact that competition may provide some benefits to consumers in the rural territories served by CTC Co, even if true, is not by itself sufficient to justify a public interest finding. By definition, the designation of a competitive ETC will *always* result in the existence of competition in a rural service territory; since Congress required the FCC to make a public interest finding in these cases, however, it obviously did not believe that the mere existence of competition would always be in the public interest.<sup>7</sup> Furthermore, although it is true that there are no competitive *wireline* telecommunications carriers in CTC Co's service area, there are several other facilities-based *wireless* carriers already operating in much of this area, and Nextel has offered no reason why designating it as an ETC will provide some benefit that the public does not already enjoy by virtue of having several other wireless carriers available to it. Finally, Nextel does not explain why designating it as an ETC is necessary to creating "a valu-

---

<sup>7</sup> It is an "elementary canon of construction that a statute should be interpreted so as not to render one part inoperative." *Department of Revenue of Oregon v. ACF Indus., Inc.*, 510 U.S. 332, 340 (1994) (citation and quotation marks omitted); see also *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 100 (1992) (court must "give effect, if possible, to every clause and word of a statute"); *Pa. Dep't of Pub. Welfare v. Davenport*, 495 U.S. 552, 562 (1990) (Supreme Court decisions express "deep reluctance to interpret a statutory provision so as to render superfluous other provisions in the same enactment"); see *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range*, 17 FCC Rcd 9614 at n.570 (2002).

able alternative” to the incumbent LECs. It appears that Nextel is already serving many (although not all) rural areas in Pennsylvania, even without universal service support. Nextel needs to demonstrate why providing it with support would help to promote the statutory purpose, as opposed to merely rewarding it with additional revenue for a service that it would have provided anyway.

Second, Nextel claims that designating it as an ETC will “provide an incentive to the incumbent LECs ... to improve their existing networks in order to remain competitive ....” Petition at 7. Although this is an interesting theory, it is not backed up by any facts. The fact is that CTCo submitted a Network Modernization Plan to the Pennsylvania Public Utility Commission in 1996, which the Commission approved in the following year.<sup>8</sup> CTCo is already in the process of modernizing and upgrading its network (which was in exemplary condition even before the Plan was filed) to provide broadband capabilities to its rural customer base. Over the past five years (1998 through 2002), CTCo’s capital expenditures have exceeded \$183 million. CTCo continues to invest its capital resources in its network. CTCo has met and surpassed every Plan milestone to date, including SS7 signaling capability, ISDN availability, interoffice wire center and remote wire center fiber optic trunk line deployment. Among other things, CTCo’s Plan requires that broadband services be available to 80% of customers within 60 days of a request by 2003 (a milestone that CTCo has met), and to 100% of customers within *five* days of a request by 2015. Currently, *all* public schools, government institutions, and health care facilities within CTCo’s study area are served by broadband-capable facilities.

In short, CTCo did not need any “incentive” from Nextel to maintain and deploy a state-of-the-art network. Nextel fails to provide any rational explanation of how the universal service support it hopes to obtain will translate into any change in CTCo’s network deployment or service quality. This supposed “incentive” is entirely fantasy.

---

<sup>8</sup> *Petition of Commonwealth Telephone Company For An Alternative Form of Regulation and Network Modernization Plan*, Docket No. P-00961024, Opinion and Order entered January 17, 1997 and Opinion and Order entered June 16, 1997.

Third, Nextel claims that its designation will serve the public interest because it will provide supported services and comply with all Commission rules governing universal service programs. Petition at 7. This, however, merely demonstrates (if true) that Nextel complies with Section 214(e)(1), not that it meets the additional public interest criterion of 214(e)(6). Nextel also claims that universal service subsidies “will allow [it] to enhance and expand its network infrastructure to better serve consumers ....” *Id.* It does not, however, offer any specific commitment as to how it will expand or improve its network, as opposed to the specific commitments that CTC Co has made in its Network Modernization Plan.

Fourth, Nextel claims that designation as an ETC will “further promot[e] the extensive role [it] plays in the provision of communications services to Pennsylvania public schools, libraries, and local, state, and federal government agencies ....” Petition at 7-8. CTC Co does not doubt that Nextel’s mobile services are very useful for government agencies, and may indeed provide a valuable public service. However, Nextel has offered no causal relationship between its receipt of universal service funding and its provision of service to government agencies. There is no apparent reason why designation Nextel as an ETC, or refusing that designation, would have any effect on the services that company provides to government agencies. It therefore would be illogical to conclude that designation of Nextel as an ETC would promote its government services and thereby serve the public interest.

In sum, Nextel has failed to demonstrate any convincing reason why designating this company as an ETC would result in any specific public-interest benefit that could not be expected to occur anyway in the absence of a designation. As stated earlier, CTC Co does not necessarily oppose the designation of additional ETCs, or contend that such designations are inherently contrary to the public interest. It is, however, the burden of the petitioner to demonstrate affirmatively that its designation would be in the public interest as required by subsection 214(e)(6), and Nextel simply has not met that burden in this Petition.

**4. Conclusion**

For the foregoing reasons, Nextel's Petition for designation as an eligible telecommunications carrier within CTC's study area should be denied, without prejudice.

Respectfully submitted,

\_\_\_\_\_  
(submitted electronically)

Scott Burnside

Senior Vice President Regulatory and Government  
Relations

COMMONWEALTH TELEPHONE COMPANY

100 CTE Drive

Dallas, PA 18612

(570) 631-1601



